

SEP 14 2005

To: Victor Hwang
Fax: 571-273-8300 / 703-872-9306
From: Jeff Tuttle
Phone: 248-840-2909
Date: 9/14/05
Subject: Office Action per Application 10/043/592

Details:

The attached drawings, revised description of drawings, and revised claims have been corrected per the office action request on 8/15/05.

The claims 4 and 5 have now been withdrawn. There was so much revision required to clarify what was being claimed it probably would have been counted as an additional claim. The invention should be adequately covered per the other claims.

I have also reattached my original comments pertaining to how this invention differs from the prior art. The consideration of this was most likely put on hold until I corrected the format issues from this latest office action.

Kind Regards,
Jeff Tuttle

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/043,592

Applicant(s)

TUTTLE, JEFFREY JOHN-
CARL

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 18 April 2005 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

☒ 1. Amendments to the specification:

- ☐ A. Amended paragraph(s) do not include markings.
- ☐ B. New paragraph(s) should not be underlined.
- ☒ C. Other See Continuation Sheet.

☐ 2. Abstract:

- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
- ☐ B. Other _____.

☒ 3. Amendments to the drawings:

- ☒ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
- ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
- ☐ C. Other _____.

☒ 4. Amendments to the claims:

- ☐ A. A complete listing of all of the claims is not present.
- ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims).
- ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
- ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
- ☒ E. Other: See Continuation Sheet.

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

- Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or
- Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Victor K. Hwang

Patent Examiner

JEROME W. DONNELLY
PRIMARY EXAMINER

Part of Paper No. 20050811

U.S. Patent and Trademark Office
PTOL-324 (11-04)

Notice of Non-Compliant Amendment (37 CFR 1.121)

SEP 14 2005



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,592	01/14/2002	Jeffrey John-Carl Tuttle		6352

7590

08/15/2005

Jeff Tuttle
42177 Blairmoor
Sterling Heights, MI 48313

EXAMINER

HWANG, VICTOR KENNY

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Item#3) Preferred embodiment of claims 1-5 are shown in figures 5-7.

Drawing# 5 is an adaptor per claims 1 and 2 that is a mass carrier configured to mate with the garments and adapted to receive mass elements by having a plurality of spaced openings, each opening being suited for selective receipt of a mass element, which are selectable in mass or amount and positionable within the carrier in accordance with such balance and performance characteristics.

Drawing# 6 is a garment per claim 3 that is configured to receive mass elements which can be used to position the mass element or elements at locations on the wearer's body which affect balance and performance characteristics. In this particular case it is a soccer shin pad configured as described.

Drawing # 7 is a garment per claim 4 and 5 that is configured to mate with an adaptor that is a mass carrier. In this case the garment is a soccer shin pad configured as described.

Item#4) ~~Rejection for failure to point out and distinctly claim the subject matter which the applicant regards as the invention. The intent of claims 4 and 5 were to specify that a garment could be designed to receive mass elements directly (per claim 3) or it could be designed to mate with an adaptor that would be the carrier of the mass elements (claim 1 and 2). Claims 4 and 5 have been reworded to clarify this as follows:-~~

Claims 4 and 5 have been withdrawn

4. ~~[revised] The garment of claim 3, which is designed to mate with an adaptor of claim 1 as the method of receipt of a mass element.~~

5. ~~[revised] The garment of claim 3, which is designed to mate with an adaptor of claim 2 as the method of receipt of a mass element.~~

Item#5) Rejection per 35 USC.102 per patent being anticipated by prior art.

The following will explain why all the claims cited as prior art all have a very different utility or function in comparison to this application. Also, the different function of these articles will force them to have a different structure and design. Thus, an article designed under this patent application versus the prior art patents would be patentably distinct, could not be covered under both patents, and would not have been anticipated by the prior art.

The first functional difference between the prior art cited and this application is that all the prior art are training devices or exercise devices that rely on using weight to create resistance to build muscles. The article described in this application is completely the opposite; its function is to reduce resistance and allow more effective muscle utilization. It is specifically called out in section VII as follows:

"The effect of modifying the components of balance of a subject is to allow different and more effective muscle utilization, which can improve athletic performance." Further, "The subject is meant to wear the garments while performing the sport in question. The subject's balance is modified to more effectively perform the motions involved in the sport." All prior art devices were designed to be worn during training, not

worn while actually performing the sport and would have hindered the subject if they were worn while performing the motions involved in the sport.

Section VII does note that the articles of this patent could be used in training, but not as resistance trainers, but rather to change the balance of the person so that different muscles are utilized. This is stated as follows:

"this is not utilizing the mass additions as resistance trainers" and "The subject's balance is modified to allow different muscles or portions of the muscles to be activated easier during exercise." Again, this is resistance reduction to make it more natural to use different muscles, not increasing resistance.

Also in this section it specifically states that the weights would not be added to the area being exercised as a resistance device would, but rather to those locations that change balance.

The idea of using weights to create resistance and train muscles is literally thousands of years old. The idea of using weights to decrease muscle resistance is completely new as far as I have been able to determine. There is nothing in any of the prior art that has any suggestion that they would use weights for a non-exercise application or to reduce resistance. Hence, I feel that there is no evidence that this new idea would have been anticipated by any of the prior art. Further, the form of the articles in this application versus prior art will be distinct and distinguishable.

The fact that this application is concerned with adding small amounts of weight to reduce resistance rather than large amount of weight to increase resistance will force a difference in the form of the articles produced under this patent versus all of the others. This form difference will first be that the locations of weight addition as called out in this application are different than those locations cited to increase resistance in prior art. Secondly, as stated in section VII:

"Note: this is not utilizing the mass additions as resistance trainers, as demonstrated by the locations and amount of weights. The amount of weight used altering balances is not of the same magnitude as weight resistance, with a common weighting being near 60 grams or 0.13 pounds per location."

Thus, it can be determined whether an article is covered under this patent or the prior art by whether the structure of the garment is designed to hold weights suitable for altering the components of balance of a subject (0.13 lbs typically) or to create muscle resistance for a subject (1-10 lbs typically). Thus, the structure of the garments for prior art would be designed to carry 8 to 80 times the load. The question could come up as to whether an article could be designed to carry both magnitudes of weight. Such an article would be much too bulky for effective use as a balance-modifying device. This would be similar to creating a carrying case that was 6 feet tall and 4 feet wide and 3 feet thick and then stating that its function was to carry a notebook computer. Such a case could certainly still hold a notebook computer, but its function is obviously to carry something larger.

[Signature]
4/18/05

[Signature]
5/14/05

25 Description of Drawings:

Figures 1-4 are referenced in the detailed description of the invention to aid in the understanding of how the components of balance of athletes are differentiated, categorized, and measured as well as how garments are designed or modified for selective mass addition to tune an athlete's balance.

30 Figure 5 is a preferred embodiment of an adaptor per claims 1 and 2. In this specific example hook and loop fastening is used to secure the mass in place but other obvious attachment methods such as adhesives or snaps could be used in its place.

Figure 6 is a preferred embodiment of a garment per claim 3 with an integrated mass-carrying article. In this case the garment is a soccer shin pad, which is designed to carry
35 mass at a location that affects zone 1 body balance.

Figure 7 is another preferred embodiment of a garment per claim 3 designed to mate with the adaptor as shown in figure 5 and per claims 1 and 2. In this case the garment is a soccer shin pad, designed to mate with a mass-carrying adaptor at a location that affects
zone 1 body balance.

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